

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

PARIS L. JAMES,

Plaintiff,

v.

DEBRA SAUERS, et al.

Defendants.

)
)
)
)
)
)
)
)
)
)

Civil Action No. 1:14-69-TFM-SPB

MEMORANDUM ORDER

This prisoner civil rights action was received by the Clerk of Court on March 3, 2014, and was referred to United States Magistrate Judge Susan Paradise Baxter for report and recommendation in accordance with the Magistrates Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrates. Magistrate Judge Baxter issued a Report and Recommendation (ECF No. 44) on December 22, 2014.

More specifically, Magistrate Judge Baxter recommended that the Motion to Dismiss (ECF No. 30) be granted in part and denied in part as follows: denied as to claims arising before February 19, 2012, based upon the statute of limitations; denied as to Defendant Heberling based on Fed. R. Civ. P. 25; granted as to the lack of personal involvement of Smith , who should be dismissed from this action; denied as to the lack of personal involvement of Sauers, Tice, Overmyer, Cole, Repco, and Ennis; granted as to the Eighth Amendment claim against Murin, Fultenberger, and Griffin based upon deprivation of food, but only Defendant Griffin should be dismissed from this action; denied as to the Eighth Amendment claim based upon the denial of Z-code status; and denied as to the Eighth Amendment claim based upon delay in treatment in September or October of 2012. It was further recommended that the Motion to Dismiss (ECF No. 14) be denied as moot in light of the filing of the Amended Complaint.

Plaintiff was served with the Report and Recommendation by mail at SCI Coal Township and informed of the timeframe in which he had to file written objections. Defendants were also served with the Report and Recommendation.

Plaintiff filed written objections on January 12, 2015 (ECF No. 47) with a brief in support (ECF No. 48). Defendants have not filed a response to those objections.

After de novo review of the complaint and documents in the case, together with the report and recommendation, the following order is entered:

AND NOW, this 28th day of January, 2015:

IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 14) is **DENIED AS MOOT** in light of the filing of the Amended Complaint.

IT IS FURTHER ORDERED that the Renewed Motion to Dismiss (ECF No. 30) the Amended Complaint is **GRANTED IN PART AND DENIED IN PART**, as follows: **DENIED** as to claims arising before February 19, 2012, based upon the statute of limitations; **DENIED** as to Defendant Heberling based on Fed. R. Civ. P. 25; **GRANTED** as to the lack of personal involvement of Smith, who is **DISMISSED** from this action; **DENIED** as to the lack of personal involvement of Sauers, Tice, Overmyer, Cole, Repco, and Ennis; **GRANTED** as to the Eighth Amendment claim against Murin, Fultenberger, and Griffin based upon deprivation of food, and Defendant Griffin is **DISMISSED** from this action; **DENIED** as to the Eighth Amendment claim based upon the denial of Z-code status; and **DENIED** as to the Eighth Amendment claim based upon delay in treatment in September or October of 2012.

IT IS FURTHER ORDERED that the report and recommendation of Magistrate Judge Baxter issued on December 22, 2014 is **ADOPTED** as the opinion of this Court.

IT IS FURTHER ORDERED that Plaintiff may file a (renewed) motion for substitution

as to Defendant Edward Heberling on or before March 24, 2015—*i.e.*, ninety (90) days after the December 23, 2014 filing of the suggestion of death. *See* Fed. R. Civ. P. 25(a)(1).

By the Court:
s/ Terrence F. McVerry
Senior United States District Judge

cc: PARIS L. JAMES
DB-7294
SCI COAL TOWNSHIP
1 KELLEY DRIVE
COAL TOWNSHIP, PA 17866
(via First-Class Mail)

Yana L. Warshafsky
Email: ywarshafsky@attorneygeneral.gov
(via CM/ECF)